

Appeal from decision of the California State Office, Bureau of Land Management, dismissing protest against determination that the Government owns the equipment on terminated oil and gas leases Sacramento 036249-A and Sacramento 036249-B.

Affirmed.

1. Administrative Procedures: Hearings -- Hearings -- Rules of Practice:
Appeals: Hearings -- Rules of Practice: Hearings

A hearing before an Administrative Law Judge is necessary only where there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is required.

2. Oil and Gas Leases: Generally -- Oil and Gas Leases: Operating Agreements

A Federal oil and gas lease conveys to the lessee the exclusive right to develop the leased deposits. In view of the exclusivity of this grant, no one may lawfully install equipment for such development on a Federal leasehold unless he holds such authority by or through the lessee.

3. Oil and Gas Leases: Generally -- Oil and Gas Leases: Operating Agreements

Another person claiming through or under a lessee has the same right to remove equipment as the lessee himself and must exercise it within the same time period the lessee would have had to do so.

4. Oil and Gas Leases: Generally -- Oil and Gas Leases: Termination

With regard to oil and gas leases, forfeitures are favored by the law, so that such leases are to be construed liberally in favor of the lessor and provisions for forfeiture strictly enforced.

5. Oil and Gas Leases: Generally -- Oil and Gas Leases: Operating Agreements

Where an oil and gas lease limits the lessee's right to remove equipment placed on the lease to a certain period of time following the lease's termination, any equipment left on the leasehold after that period becomes the property of the lessor.

6. Notice: Generally -- Oil and Gas Leases: Generally -- Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Operating Agreements -- Oil and Gas Leases: Termination

The Department is obligated to notify only the lessee of record about the termination of an oil and gas lease for cessation of production. If the lessee has created an interest in any other person, whether by assignment, agreement, or otherwise, such other person must look to the lessee of record to provide notice of the termination of the lease or for redress if such notice is not provided.

APPEARANCES: Mark L. Nations, Esq., Bakersfield, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

KernCo Drilling Company (KernCo), and Milford B. Dreblow have appealed from the September 13, 1982, decision of the California State Office, Bureau of Land Management (BLM), dismissing their protest against BLM's determination that the Government owns the equipment on terminated oil and gas leases Sacramento 036249-A and Sacramento 036249-B. In 1979, this Board held that the leases terminated for cessation of production, effective March 31, 1976. John S. Pehar, 41 IBLA 191 (1979).

Appellants assert that they had acted as operator on the terminated leases at various times, and attached to their appeal a copy of an operating

agreement. Nothing in the record, however, indicates that an operating agreement or an assignment had been filed with the Department for approval, and appellants note that the agreement was unapproved. Pehar, the lessee of record, had designated KernCo as operator under the "B" lease in 1970, but in 1975, Clarke N. Simm was designated as operator of the "B" lease as well as the "A" lease. After the Board had issued its final decision holding that these leases terminated, Dreblow wrote a letter to the Board explaining his work on the leases, stating that he started reworking the wells on August 8, 1977, and finished reworking the wells by November 1977. At about the same time that Dreblow sent his letter, Pehar filed a petition for reconsideration with the Board, generally contending that because of the activities of Dreblow, the leases should not have been held to have expired. By order of September 12, 1979, the Board denied Pehar's petition, noting that the wells had not been placed in production within 60 days after receipt of notice to do so.

Because section 1 of the base lease, issued in 1946, provides for a term of 5 years and so long thereafter as oil or gas is produced in paying quantities, the cessation of production resulted in the expiration of the lease and brought into operation the following lease provision:

Sec. 6. Purchase of materials, etc., on termination of lease. -- Upon the expiration of this lease, or the earlier termination thereof pursuant to the last preceding section, the lessor or another lessee may, if the less shall so elect within 3 months from the termination of the lease, purchase all materials, tools, machinery, appliances, structures, and equipment placed in or upon the land by the lessee, and in use thereon as a necessary or useful part of an operating or producing plant * * * pending such election all equipment shall remain in normal position. If the lessor, or another lessee, shall not within 3 months elect to purchase all or any part of such materials, tools, machinery, appliances, structures, and equipment, the lessee shall have the right at any time, within a period of 90 days, to remove from the premises all the materials, tools, machinery, appliances, structures, and equipment which the lessor shall not have elected to purchase, save and except casing in wells and other equipment or apparatus necessary for the preservation of the well or wells. Any materials, tools, machinery, appliances, structures, and equipment, including casing in or out of wells on the leased lands, shall become the property of the lessor on expiration of the period of 90 days above referred to or such extension thereof as may be granted on account of adverse climatic conditions throughout said period.

This provision corresponds closely to the representative example set out in 4 H. Williams, Oil and Gas Law § 674 (1981), from another Federal lease form.

Appellant contends that section 7 of the lease form, captioned Proceedings in case of default, governs this appeal, not the section set forth above.

This contention is incorrect. The leases expired because of cessation of production, not because of a default by the lessee. Because the equipment was not removed within the time provided by section 6, BLM determined that the equipment became the property of the lessor, the United States.

Appellants assert that they purchased this equipment and installed it on the leases, and that the equipment was never the property of the lessee, John Pehar. Appellants assert that they were neither parties to the leases nor successor to John Pehar and assert that they are not bound by the terms of the lease. Appellants have requested a hearing before an Administrative Law Judge pursuant to 43 CFR 4.415, so that issues of fact may be determined. Appellants wish to establish their right to ownership and possession of the equipment, that they were not parties and not bound by the lease terms, and that they were never given notice of the default or forfeiture.

[1] A hearing is necessary only where there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is required. See United States v. Consolidated Mines & Smelting Co., Ltd., 455 F.2d 432, 453 (9th Cir. 1971). In order to determine whether such an issue exists, we must first examine the legal principles which govern our consideration of this appeal. We will assume, for the sake of argument, that appellants were the owners of the equipment at the time it was affixed to the leasehold. We also agree that appellants were not parties to the leases. See Bert O. Peterson, 58 I.D. 661 (1944), aff'd, Peterson v. Ickes, 151 F.2d 301 (D.C. Cir.), cert. denied, 326 U.S. 795 (1945). Furthermore, the record does not indicate that the Department ever gave appellants notice of the termination of the leases. Thus, this appeal raises two issues which are purely legal in nature. The first issue is whether appellants were bound by the provisions of the leases, notwithstanding the fact that they were not parties to it. The second issue is whether they were entitled to notice of the termination of the leases.

Although appellants believe that the issue concerning applicability of the lease provisions is resolved by the fact that they were not parties to the lease, this is not correct. A trespasser, for example, is not in privity with the landowner, and if the trespasser installs equipment on the land, he forfeits title to it at the moment of its installation; he has no right to remove it. See 1 G. Thompson, Real Property § 64 (1964). The right to remove equipment, therefore, depends on the lawfulness of its annexation to or placement upon the land, although it has sometimes been held that if trespasser annexes equipment owned by another, the owner of the equipment may remove it if he had no knowledge of the trespass. Id. note 11. Appellants' equipment, however, was not installed on the leaseholds by someone else; they installed it themselves.

Since appellants' right to remove the equipment depends upon the lawfulness of its installation, we must first consider the authority for appellants' entry upon the leaseholds and installation of equipment thereon. We must bear in mind that rights to use and occupy Federal lands do not arise by

implication; they must be expressly granted by the United States. Such grants are to be construed favorably to the Government, so that nothing passes except what is conveyed in clear terms, and that if there are doubts, they are resolved in favor of the Government, not against it. See generally United States v. Union Pacific R.R., 353 U.S. 112, 116 (1957).

[2] Section 1 of the lease conveyed to the lessee, not appellants, the "exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and gas deposits" in the subject land. This grant was conditioned upon the lessee's acceptance of other lease provisions such as that of section 6 quoted above, which established the lessee's right to remove certain equipment from the leasehold but limits a time when such right may be exercised. Under 30 CFR 221.18, a lessee is required to comply with the terms of the lease, and "lessee" is defined in 30 CFR 221.2(j) as "[t]he party authorized by a lease, or approved assignment thereof, to develop and produce oil and gas on the leased lands in accordance with the regulations in this part, including, all parties holding such authority by or through him." (Emphasis added.). In view of the exclusivity of the rights granted under section 1 of the lease, no one may lawfully install equipment to develop Federally leased deposits unless he holds such authority by or through the lessee.

A lessee may choose someone else to conduct operations on the leasehold, but if he does so, he must comply with certain regulations, including 30 CFR 221.19(a), which provides in pertinent part:

In all cases where operations on a lease are not conducted by the record owner, but are to be conducted under authority of an operating agreement, an unapproved assignment, or other arrangement, a "designation of operator" shall be submitted to the supervisor, in a manner and form approved by the supervisor, prior to commencement of operations.

The record submitted on appeal does not show compliance with this regulation, since Clarke N. Simm was the last designated operator, not appellants. We need not decide now whether failure to comply with this regulation rendered appellants' entry upon the leasehold unlawful and their equipment subject to immediate forfeiture. We only note that if appellants adhere to their denial of the applicability of the lease, they must perforce admit the illegality of their operations on the leasehold, because outside of the lease, there is no legal authority for such activities.

Were we to hold that operators were not subject to conditions set forth in oil and gas leases because they are not parties to those leases, the Federal oil and gas leasing system would be critically undermined. Oil and gas leases contain terms, conditions, and stipulations relating to the manner in which operations are conducted on the leasehold. Such provisions are authorized by statute; some are mandated. See 30 U.S.C. § 187 (1976). They cannot be erased merely because the lessee has allowed someone who is not a party to the lease to conduct operations on the leasehold. In view of the

foregoing, no prudent operator would fail to review those lease provisions which govern the conduct of operations and the placement of equipment on the leasehold. It is well settled that the law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it. Getty Oil Co., 61 IBLA 226, 89 I.D. 26 (1982). It therefore follows that appellants were under constructive notice that equipment left on the lease beyond the period provided in section 6 would become the property of the United States. Having established that appellants are subject to the lease, we turn our attention to the specific effect of section 6.

[3] In general, another person claiming through or under a lessee has the same right to remove equipment as the lessee himself and must exercise it within the same time the lessee would have had to do so. See 35 Am. Jur. 2d Fixtures § 49 (1967). Appellants suggest that section 6 refers only to the lessee's equipment, so that equipment on the leasehold not belonging to the lessee is outside the scope of the section. However, in construing the reference in section 6 to "equipment placed on the land by the lessee," we must remember that under section 1, only the "lessee" is given the exclusive right to place such equipment on the lease. Therefore, section 6 covers equipment installed by anyone whose authority to do so derives from section 1. As there is no other authority by which equipment may be legally installed, section 6 covers all equipment on the leasehold. This construction is bolstered by the last sentence of section 6, which refers to "Any materials, tools, machinery, appliances, structures, and equipment * * *." (Emphasis added.)

[4, 5] It may be suggested that section 6 of the lease authorizes a forfeiture, but this provision is not subject to the familiar rule that forfeitures are viewed with disfavor and will be enforced only when circumstances require it. The courts have held that in connection with oil and gas leases, forfeitures are favored by the law so that such leases are to be construed liberally in favor of the lessor and provisions for forfeiture strictly enforced. See Bert O. Peterson, supra at 666, and cases cited therein; see also 38 Am. Jur. 2d Gas and Oil § 99 (1968). The enforceability of provisions such as section 6 is well established. In Garr-Woolley v. Martin, 579 P.2d 206 (Okla. Ct. App. 1978), the court set forth the general legal principles concerning removal of equipment in a dispute between an oil and gas lessee and a landowner. The primary term of the lease had been extended by production which later ceased. Although the lease provided that machinery and fixtures placed on the leasehold could be removed at any time, the court construed this as meaning within a reasonable time after expiration of the lease. The court referred to "the well-settled rule * * * that if the machinery is not removed within a reasonable time after the termination of the lease, the equipment becomes the property of the landowner." Id. at 208. See also Gutierrez v. Davis, 618 F.2d 700 (10th Cir. 1980). After reviewing authorities which included cases from a number of jurisdictions, the court in Garr-Wooley v. Martin, supra, noted that there was a split of authority on the legal theory that serves as the basis for this transfer of title. Some cases have held that lessee has abandoned such property with the effect that it becomes the property of the landowner. The court, however, relied upon a second theory which appears to have wider acceptance and which the court explains as follows:

[C]asing in wells, derricks, engines and other machinery placed upon the land by the lessee for developing and operating the land for oil and gas purposes are considered trade fixtures. Luttrell v. Parker Drilling Co., [341 P.2d 244 (Okla. 1959)]; 3 W. Summers, § 526 [The Law of Oil and Gas] [(1958)]. The second line of authority relies upon this characterization to transfer title to the landowner. Failure to remove the trade fixtures within a reasonable time results in a forfeiture, making the fixtures part of the realty vesting the owner of the fee with title thereto. Smith v. United States, 113 F.2d 191 (10th Cir. 1940); Hill v. Larcon Co., 131 F. Supp. 469 (W.D. Ark. 1955); Shellar v. Shivers, 171 Pa. 569, 33 A. 95 (Pa. 1895); Vermillion v. Fidel, 256 S.W. 2d 969 (Tex. 1952). The basis behind this rule was expressed in Terry v. Crossway, 264 S.W. 718, 720 (Tex. 1924), as follows:

The clause in appellant's contract giving him the right to remove his casing, pipes, and rods "at any time" should be construed as giving him only a reasonable time to remove them after the expiration of his lease. It certainly was not within the contemplation of the parties to the lease that appellant could incumber the land with his fixtures, machinery, piping, and tubes, and, after the expiration of his lease and abandonment of all of his rights thereunder, hold possession of the land by willfully failing and refusing to remove his property. The right to an indefinite possession of the land for the purpose of claiming his fixtures now asserted by appellant would not be to his advantage, because his property would necessarily deteriorate, but would result in great hardship to the owner of the fee. Under appellant's construction of the contract, he could withhold from the owners of the fee the possession of the land to the extent covered by his improvements for an indefinite time, though all his rights under the lease were forfeited. If we are correct in this construction of the lease, the failure of appellant to remove his fixtures within a reasonable time resulted in a forfeiture, making them a part of the realty and vesting the owner of the fee with title thereto. (Citation omitted.)

Id. at 208-09. Unlike the lease provision considered by the court, section 6 requires removal of equipment within a definite period. ^{1/} In either

^{1/} Although the leases were held to have terminated for lack of production effective Mar. 31, 1976, the termination date for triggering the running of the time periods of section 6 was June 22, 1979, when the Department's decision became final. Pehar's petition for reconsideration did not suspend the running of this period. See 43 CFR 4.21(c).

event, equipment remaining on the leasehold beyond the period provided for removal becomes the property of the lessor. As noted in 4 H. Williams, Oil and Gas Law, §§ 674.1, 674.2 (1981):

* * * * *

Some leases provide that the lessee may remove casing and fixtures but provide for a time limit on the exercise of such right. Where such a time limit is imposed there may arise difficult questions as to whether (and exactly when) a lease has terminated. If, however, it has been determined that the lease has in fact terminated and the time limit for removal of equipment after termination has expired, there appears to be no tendency (or reason) to extend the period of time for removal of equipment so long as such period provided for was reasonable in duration.

§ 674.2 Removal of fixtures and casing clause: Whether removal may be barred

If the lessee fails to remove casing, fixtures and other equipment on the premises within a reasonable time, the lessee's title to such material is ended and title vests in the surface owner. Obviously under such circumstances the lessee may be barred from removal of such material or, in the event of wrongful removal thereof, may be liable in damages. Similarly, the lessee has no right to remove casing and fixtures in violation of an express lease provision giving the lessor rights thereto. [Footnotes omitted.]

See, generally, 3 W. Summers, The Law of Oil and Gas, § 526 (1958).

[6] Having determined that appellants' equipment was subject to forfeiture under section 6 of the lease, we now must consider whether appellants were entitled to notice that the lease had terminated. Appellants base their claim of entitlement to notice on the provisions of section 7 of the lease. As we held earlier, however, section 7 is not applicable to this particular case. Nevertheless, we will consider whether appellants were entitled to some kind of notice before their right to remove equipment from the lease ended pursuant to section 6 of the lease.

The decision below makes clear the BLM's view that any required notice was satisfied by notifying the lessee of record, John S. Pehar, that his lease had terminated. A number of Departmental decisions support the view that the Department need only notify lessee of record, even where the Department has specific notice that the interests of other persons may be adversely affected by a decision that a lease has terminated. For example, in Grace Petroleum Corp., 62 IBLA 180 (1982), the Board considered whether an assignee under an unapproved assignment could petition for reinstatement of an oil and gas lease terminated by operation of law for failure to pay timely the annual rental under 30 U.S.C. § 188 (1976). Although the assignee

had made the payment, which was deficient, BLM mailed its receipt for payment to the lessee of record, not the assignee, indicating the deficiency. The lessee of record, however, did not notify the assignee of the need to make further payment until the time for doing so had expired. The lessee's failure to notify the assignee provided no basis for reinstating the lease. The Board relied on 30 U.S.C. § 187a (1976), which provides that until approval of an assignment, "the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed." The Board further held that only the lessee of record, not a putative assignee, could petition for reinstatement of a terminated lease. Thus, even though Grace's application for assignment was pending and Grace itself made the deficient payment, Grace was not entitled to a notice of rental deficiency; any notification requirement was satisfied by notifying the lessee of record about the termination.

In Tenneco Oil Co., 63 IBLA 339 (1982), we held that BLM is not required to give separate notice of the termination of an oil and gas lease to an assignee whose application for approval of the assignment has been filed but not yet acted upon. Where an assignment has been made but not yet acted upon, the lessee of record still retains full authority to take actions with respect to the lease, including the authority to relinquish it, notwithstanding the fact that such action would cut off the rights of his assignees. See, e.g., J. M. Dunbar, 62 IBLA 119 (1982). In Bert O. Peterson, *supra*, the Department held that an operator under an approved operating agreement was not entitled to notice of cancellation of a lease.

If anyone had the obligation to notify appellants about the termination of the lease, it was Pehar, the party who had induced appellants to conduct operations on the lease. If appellants suffered a loss because they received no notice of termination, they must look to Pehar for redress.

One can make a stronger argument for requiring BLM to notify assignees and approved operators whose interests are a matter of record than one can make on behalf of an operator who has not bothered to make his interest known. Appellant Dreblow himself admits that his operating agreement was unapproved, and the record submitted with this appeal shows no designation of appellant as operator in effect at the termination of the lease, as required by 30 CFR 221.19(a). Even such a designation would probably not have been sufficient notice of appellants' interest in the equipment. In short, there is absolutely nothing in the record of this appeal to indicate that appellants had any interest in the lease whatever at the critical dates in question. BLM can hardly be expected to notify someone who has not made himself known.

We hold that the Government satisfied any obligation to provide notice of termination by notifying the lessee of record. Even if we were to hold that this obligation extended to others, it could not extend to someone who has failed to notify the Government of his interest. Our resolution of the legal issues raised by this appeal makes clear that appellants have raised no material issue of disputed fact requiring resolution through the introduction

of testimony and other evidence. 2/ Accordingly, we deny appellants' request for a hearing before an Administrative Law Judge.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

2/ If appellants had actual notice of the termination of the leases, regardless of the source, they could gain no right by the Government's failure to notify them. Cf. Bert O. Peterson, supra. Appellants wrote a letter to the Board just after we issued our decision in Pehar, supra, when appellants could have legally removed certain equipment from the leases. Although this letter does not establish conclusively that appellants were aware of the Board's decision, it is sufficient to create an inference that they knew the leases had terminated. If we were required to determine whether appellants had actual notice, then a hearing would be necessary, since this would be a material issue of fact. However, our holding that the Government had no obligation to notify appellants obviates the need to consider whether appellants had actual notice, notwithstanding the lack of notice from BLM.

